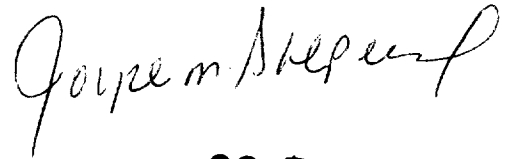


**A RESOLUTION BY**

**COUNCILMEMBER JOYCE M. SHEPERD**



**06-R-2482**

**AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO AN AGREEMENT WITH HOUSING GROUP PARTNERS, LLC ("HOUSING GROUP"), PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED IN THE CITY OF ATLANTA, FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.**

**WHEREAS**, Housing Group is developing Vineyards at Browns Mill, in Land Lots 28, 29, 36, and 37 of the 14<sup>th</sup> District, a residential planned development housing subdivision ("Subdivision"), currently consisting of twenty-six (26) residential lots, located in the City of Atlanta, Fulton County, Georgia, and in which area water service is provided by the City; a description of the entire property being attached hereto and incorporated herein by reference as Exhibit "1"; and

**WHEREAS**, Housing Group Partners, LLC ("Housing Group ") wishes to have its potable water service to individual meters to allow individual home owner's to be billed directly; and

**WHEREAS**, the single-family homes in the subdivision are served with potable water from the City; and

**WHEREAS**, The City typically requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement granted to the City; and

**WHEREAS**, Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that, upon request, individual meters can be located on private property if the certain conditions as outlined in the Section can be met; and

**WHEREAS**, Housing Group proposes to install twenty-six (26) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the Subdivision, plus one to serve the Homeowner's Association; and

**WHEREAS**, the Commissioner of the City's Department of Watershed Management, has reviewed the request submitted by Housing Group for the installation of individual water meters within the

## AGREEMENT AND EASEMENT

This AGREEMENT AND EASEMENT ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_ 2006, between Housing Group Partners, LLC ("Housing Group"), a Georgia limited liability company, and the City of Atlanta ("City"), a Georgia municipal corporation.

### **BACKGROUND:**

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises, normally where the water meter is located and where the City's responsibility ends and the water customer's responsibility begins; and

Housing Group is developing The Vineyards at Browns Mill, in Land Lot 28, 29, 36, and 37, 14<sup>th</sup> District, a residential planned development housing subdivision ("Subdivision"), currently consisting of twenty six (26) residential lots, located in the City of Atlanta, Fulton County, Georgia, and in which area water service is provided by the City; a description of the entire property being attached hereto and incorporated herein by reference as Exhibit "1"; and

Housing Group proposes to locate up to twenty six (26) water meters at locations different than the service connection location, to allow each meter to be located on an individual lot and five meters on the Common Area controlled by the Subdivision Association.

Housing Group, as part of the proposal, will install a water-main running to a fire hydrant in the middle and end of the Subdivision. Water meters will be located at various points along the water main to service the lots as well as an additional meter for use by the Subdivision Association.

Accordingly, the City and Housing Group agree as follows:

- 1. Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit A, entitled Utility Plan for The Vineyards at Browns Mill subdivision, prepared by Eberly & Associates, Inc., dated August 25, 2005. The water system for the Subdivision will contain individual water meters at the proximate locations shown on Exhibit A. The City agrees that each individual water meter will be read by the City or its representatives at the proximate locations set forth on Exhibit A for the purposes of rendering bills to each individual property owner for its respective and independent water use. Housing Group hereby grants to the City and its representatives a perpetual non-exclusive easement to enter the Subdivision to read any meter. The easement granted in the previous sentence is limited to the area reasonably necessary for the City to read any meter. Housing Group agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Subdivision a covenant that each property owner and the Subdivision Association: (i) acknowledges the City's or its representatives' easement to enter the Subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with

respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence or the meter and a non-residential, Subdivision Association outlet must be maintained and repaired by the particular resident or the Subdivision Association, as the case may be, in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Subdivision Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Subdivision, except for claims relating from the City's or its representative's negligence or intentional misconduct.

2. **Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Subdivision will not be located where any individual water meter is located. Instead, the "service connection" location will be at the point of the water system ("Valve") as shown on Exhibit A, so that the City's responsibility for the public portions of the water system includes the Valve. Housing Group agrees that it is entirely responsible, at its expense, for the construction of all water services infrastructure located immediately after the "service connection" and throughout the Subdivision. The City's approval of Exhibit A does not encompass an approval that the materials proposed to be installed in the Subdivision in the form of water services infrastructure, except for materials identified on the Exhibit A as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).
3. **Miscellaneous:**
  - 3.1. **Future Modifications to Exhibit A Authorized.** Should the Subdivision be modified in the future so as to alter or increase the land area and number of individual residential water meters within the Subdivision beyond that set forth in Exhibit A, the provisions of this Agreement shall also apply to said modified area and associated individual water meters. In the event of such modification, Housing Group agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".
  - 3.2. **Binding Effect.** This Agreement, including the easements and obligations herein, are binding upon Housing Group and the City, and their successors, successors in title (as to Housing Group and the Subdivision) and assigns.
  - 3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement never been a part of this Agreement.

3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.

3.5. **Forum Selection Clause.** The City and Housing Group agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.

3.6. **Ethics: Gratuities And Kickbacks.**

3.6.1. **Gratuities and Kickbacks.** The right of Housing Group to proceed under this Agreement may be terminated if, after notice and hearing, City determines that Housing Group:

3.6.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and

3.6.1.2. intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. **Contingent Fees.** Housing Group warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that Housing Group has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from Housing Group the full amount of such fee, commission, percentage, gift or consideration.

3.8. **Further Acts.** Housing Group agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

Signed, Sealed and Delivered  
in the presence of:

HOUSING GROUP PARTNERS, LLC

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Name:  
Title: *Manager*

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:  
(NOTARY SEAL)

Signed, Sealed and Delivered  
in the presence of:

CITY: CITY OF ATLANTA

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:  
(NOTARY SEAL)

ATTEST:

\_\_\_\_\_  
MUNICIPAL CLERK (Seal)

APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
COMMISSIONER, DEPARTMENT OF  
WATERSHED MANAGEMENT

\_\_\_\_\_  
CITY ATTORNEY

C-1.C

ION OF THIS PROPERTY LIES IN THE FLOOD HAZARD  
E AS PER THE FULTON COUNTY F.I.R.M. COMMUNITY PANEL NO.  
386 DATED JUNE 22, 1998.

**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**